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IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1926.

No. 301.

EDWARD C. TWIST, *Petitioner,*

vs.

PRAIRIE OIL & GAS COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF *of* PETITIONER.

Statement of the Case.

In this case, trial and appeal were had jointly with No. 302, *Twist, et al., v. Prairie Oil & Gas Company.* By stipulation, the complete record was printed only in No. 302, the record in this case being prepared only so as to show the difference in detail, such as description of land. All questions presented are identical, and all references to the record refer to No. 302, unless otherwise specified.

Petitioner, a Cherokee Indian allottee, sues to cancel a certain "extension lease" executed during his minority to the Los Angeles Cherokee Oil Company, and by it assigned to the respondent, Prairie Oil & Gas Company. The claim is for damages for continuing trespass, for cancella-

tion of recorded lease as cloud upon title, injunction and quieting of title (Tr., p. 9).

The suit was instituted in the state court, and by virtue of the Oklahoma code, joined an action for damages as one cause of action, with the equitable claims referred to as a second cause of action.

The so-called "extension lease" was executed by the guardian in the course of certain proceedings appearing at pages 11-20 of the transcript. The original lease expired on March 21, 1920. Other "extension leases," including the one involved in No. 302, now before the court, were included in the same petition, and it was contended that the extension agreement (Tr. #301, p. 8) was secured by fraud, duress and false dealings (Tr. #301, p. 4). Also that the proceedings were insufficient to authorize the court to approve such a sale in behalf of minors, by virtue of Probate Rule 9, promulgated by the Supreme Court of Oklahoma on June 11, 1914 (Tr. #301, p. 4).

The respondent removed the case to the Federal Court on the ground of diversity of citizenship and caused it to be docketed as a case in equity. Respondent answered (Tr. #301, p. 10) and prayed "that the court, by its decree, declare and determine that the defendant's title to said oil and gas lease, as modified and extended, is good, valid and subsisting as against any claim of the plaintiff, and that its title thereto be quieted as against said claims."

The facts upon which an accounting could be had, and all other facts necessary to a decision, except on the question of fraud and inadequacy of consideration, were stipu-

lated (Tr., pp. 43-51). The parties and the trial court treated the case as one in equity, and the decree granted only equitable relief (Tr., pp. 41-42).

The Court of Appeals, when the matter was presented, held in its opinion (Tr., p. 94) in substance, that only the legal cause of action could be maintained in the Federal Court, and that the equitable cause of action could not, since there was an adequate remedy at law, the plaintiff being out of possession, and the defendant in possession, and that by reason of the fact that there was no waiver of jury, as provided by law, the court had no jurisdiction to review any question except those which arise on process, pleadings or judgment. The court refused to review the evidence and affirmed the judgments in favor of respondent on the ground that the pleadings were sufficient to support them.

ARGUMENT *and* AUTHORITIES.

If this was a suit in equity, then the appeal was the proper remedy, and the appellate court should have reviewed the evidence as well as the pleadings and the judgment. The relief sought by way of cancellation of leases, injunction against continuing trespass, and to quiet title, are all of an equitable nature.

Kellogg v. Schaechle, 273 Fed. 1012;

Fay v. Hill, 249 Fed. 418 (8th Cir. Appls.);

Black, Recission and Cancellation, Vol. 2, Sec. 655;

General Film Co. v. Sampliner, 252 Fed. 444;

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Becker Franz Co. v. *Shannon Co.*, 256 Fed. 522;

Bispham's Prin. of Eq. (8th ed.), Sec. 31;

Story, Equity Jur. (14th ed.), Vol. 2, Secs. 932-933;

9th Corpus Juris, p. 1160.

The remedy at law was in the plaintiff, for possession and to recover damages, but it was "not adequate, by no means as practical and efficient as a remedy in equity."

—*Chanslor Canfield Co.* v. *U. S.*, *supra* (9th Circuit Court of Appeals).

If a court of equity has jurisdiction, it may also dispose of the legal title.

—*Chanslor Canfield Co.* v. *U. S.*, *supra*;

Becker Franz Co. v. *Shannon Co.*, *supra* (9th Circuit Court of Appeals);

Equity Rule 23.

Even if the remedy at law be deemed adequate, equity may proceed in the absence of objection. It is not a question of jurisdiction, but of procedure, which may be waived.

—Enc. U. S. Supreme Ct. Rep., Vol. 5, p. 826;

Perego v. *Dodge*, 163 U. S. 161, 41 L. ed. 113;

Ashland Waterworks Co. v. *City of Ashland*, 215 Fed. 492;

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Pacific Coal & Transportation Co. v. *Pioneer Mining Co.*, 205 Fed. 577, 9th C. C. A.;

Fay v. *Hill*, 249 Fed. 415, 8th C. C. A.;

Hansell v. *Parnell*, 1 Fed. (2nd) 266.

And the fact that an action for damages for trespass was included in the plaintiff's bill, does not oust equity of jurisdiction.

—*Becker Franz Co.* v. *Shannon Co.*, *supra*;

Twenty-one Mining Co. v. *Original Sixteen-to-one Mining Co.*, *supra*;

Chanslor Canfield Co. v. *U. S.*, *supra*.

The fact that there was an agreed statement of fact, as to every allegation except fraud and inadequacy of consideration, takes the case out of the rule as to trial of questions of fact without written waiver of jury.

—*Ford* v. *Grimmett*, 278 Fed. 140.

Quotations from various cases above cited appear in the brief appended to the petition for the writ.

Sections 274a and 274b of the Judicial Code, and Equity Rule 22, clearly contemplate that causes erroneously docketed shall be transferred by the trial court. In this case the appellate court substantially accomplished a transfer of a cause, treated by the trial court and by all parties as one in equity, to the law docket, and consequent dismissal. If transferred by the trial court, the right to amend

the pleadings under section 274a is granted at any stage of the pleadings. But the cause must proceed and be determined upon such amended pleadings, and as no opportunity is afforded in the appellate court for amendment, this right has been denied us.

The defendant's answer, invoking equitable relief, changed the proceeding "from one at law to one in equity, with all the consequences flowing therefrom."

—*Liberty Oil Company* v. *Condon National Bank*, 67 L. ed. 232; 260 U. S. 234.

Prior to the enactment of Rule 22, a suit erroneously commenced on the equity side must be dismissed. And the decree of dismissal must expressly adjudge that it is rendered for that reason, "to the end that the complainant may resort to his action at law for any damages he may sustain if he is so advised."

—*Indian Land & Trust Co.* v. *Shucksfeldt*, 133 Fed. 484.

Unless the transfer may be accomplished only in the trial court, Rule 22 and sections 274a and 274b have complicated, rather than simplified, the practice. This is not the spirit of these enactments. They

> "manifest a purpose on the part of Congress to change from a suit at law to one in equity, and the reverse, with as little delay and as little insistence on form as possible, and are long steps toward code practice."
>
> —*Liberty Oil Company* v. *Condon Bank*, *supra*.

The opinion in that case is in accord with the decisions in:

Hansell v. *Pursell*, 1 Fed. (2nd) 266, 8th C. C. A.;

Pacific Coal & Transportation Co. v. *Pioneer Mining Co.* 205 Fed. 577, 9th C. C. A.;
Vidal v. *Co.*, 276 Fed. 856 7, 2nd C. C. A., syllabus:
Fay v. *Hill*, 249 Fed. 415, 8th C. C. A

So much for the question of practice. If the court shall see fit to review the decisions of the trial court and of the 8th Circuit Court of Appeals, in the interest of expediency the case should also be determined on the merits.

—*Liberty Oil Co.* v. *Condon National Bank, supra.*

We, therefore, pass to a consideration of the merits of the case:

The petitioner, a Cherokee Indian allottee, was a ward of the United States and restricted during his minority.

—*Truskett* v. *Closser*, 236 U. S. 223

The power to lease, on the date specified, was conferred by section 6 of the Act of May 27, 1908 (35 Stat at L. 312), on the probate courts of the state. These courts became federal instrumentalities for the removal of this restriction but the procedure for leasing was to be prescribed by the state alone. The right to regulate procedure includes the power to enforce compliance, and implies jurisdiction to determine the effect of non-compliance.

Section 2, article 7, of the Oklahoma Constitution, is in part as follows:

> "The original jurisdiction of the Supreme Court shall extend to a general superintending control over all inferior courts and all commissions and boards created by law."

By request of the Interior Department of the United States (see report, Commissioner Indian Affairs, 1914, pp. 50-55) the Supreme Court of Oklahoma promulgated certain rules for the control of the probate courts, Rule 9 being in these words:

> "No oil and gas or other mineral lease covering lands belonging to minors or incompetents will be approved except after sale in open court to the highest and best responsible bidder. All petitions for the approval of oil and gas leases shall be filed at least five days before the same are sold, as provided herein, and notice of such sale must be given by posting and by publication, where publication is practicable, and shall be on ..... of each ....."

In October, 1915, the rules were construed by the Supreme Court of Oklahoma. They were said to be local statutes, of the same effect as if enacted by the legislature. It was held that the probate courts had no power or authority, that is to say, no jurisdiction, to ignore or dispense with these rules.

—*Freeling* v. *Kight*, 49 Okl. 202, 152 Pac. 362.

That decision had been rendered approximately eight months before the occurrence herein involved. Kight, county judge, was compelled by mandamus to observe the rules of which Rule 9 above is a part.

In *Ex parte Virginia*, 25 L. ed. 669-673, 100 U. S. 313, it is said:

> "It is well settled that the writ of mandamus will issue to correct the action of subordinate or inferior courts or judicial officers *where they have exceeded*

their jurisdiction, and there is no other adequate remedy."

Also:

"In what cases such a writ (mandamus) is warranted by the principles and usages of law, it is not always easy to determine. Its use has been very much extended in modern times and now it may be said to be an established remedy to oblige inferior courts and magistrates to do that which they are in theory and by virtue of their office bound to do. *It does not lie to control judicial discretion*, except when that discretion has been abused; but it is a remedy when the case is outside of the exercise of this discretion and *outside the jurisdiction of the court* or officer to which or to whom the writ is addressed."

The rules, by this decision, are held to be, not directory, but mandatory. In other words, the probate courts of Oklahoma are without jurisdiction to dispense with these rules.

Following the *Knight* case, as we observed in our former brief, the Supreme Court of Oklahoma, in *Winona Oil Co. v. Barnes*, 83 Okl. 248, and *Carlisle v. National Oil Development Co.*, 83 Okl. 217, held that probate courts had no jurisdiction to order or confirm a transaction which was not in substantial compliance with Rule 9, requiring a sale in open court to the highest and best bidder, after public notice thereof; and that such confirmation and sale were absolutely void.

These decisions determine that the rule is a local statute, and that the court is without jurisdiction to disregard it.

The federal courts are bound by the local construction of state laws, especially when the interpretation antedates

the transaction involved; and this is particularly true where the jurisdiction of inferior state tribunals is the subject in question.

—*Kuhn* v. *Fairmount Coal Co.*, 215 U. S. 349;
St. L. & S. F. R. Co. v. *Quinette*, 251 Fed. 773;
Messenger v. *Anderson*, 225 U. S. 436;
Barnett v. *Kunkel*, 259 Fed. 394;
Commercial Bank v. *Buckingham*, 5 How. 317, 12 L. ed. 169;
Baldwin v. *Woodstock Iron Co.*, 154 U. S. 177;
Leffingwell v. *Warren*, 67 U. S. 599;
Standard Oil Co. v. *Missouri*, 224 U. S. 270;
Freeport Water Co. v. *Freeport*, 180 U. S. 587.

In a sense Rule 9 is a federal restriction upon the alienation of Indian land. The sovereign guardian of the petitioners procured its enactment by the state court. It was designed to prevent the existence of the situation here presented. It should therefore be so construed as to destroy the evil at which it was aimed. It is of no value unless its violation shall invoke a penalty. The penalty prescribed is not confiscatory, since the decisions require reimbursement for the expense of development.

—*Barnes* v. *Winona Oil Co.*, 83 Okl. 253, 200 Pac. 985.

Conveyances violating federal restrictions generally are held void, and this should furnish an additional reason for following the local decisions here.

—Act May 27, 1908, Sec. 5;
Truskett v. *Closser*, *supra*;
Heckman v. *U. S.*, 224 U. S. 413;
Goat v. *U. S.*, 224 U. S. 458.

If the Oklahoma decisions are to be followed, and if the court shall entertain our appeal, then the judgment should be reversed and judgment rendered in favor of petitioner, with instructions to the court to hear the matter further solely upon the question of accounting for oil and gas removed under the extension leases since the date of the trial in the court below.

If, however, the court shall hold that the Oklahoma decisions are inapplicable, nevertheless the extension leases should be cancelled by reason of the fact that they were obtained for a grossly inadequate consideration, in an irregular manner, and that they are tainted with fraud and unfair dealings.

Gross Inadequacy of Consideration.

The extension of lease here involved was one of a number executed by virtue of a petition (Tr., p. 15) and an order of the County Court of Tulsa County (Tr., p. 18) in consideration of the sum of $18,000.00 in cash, increase of the royalty from ten (10) per cent to twelve and one-half (12½) per cent, and the drilling of a well on each of the tracts within six months from the date thereof, June 16, 1916. At that time oil was of the value of $1.35 per barrel (Tr., p. 47). On March 5, 1917, these leases were assigned to the Prairie Oil & Gas Company, they paying for the William G. Twist lease, $112,561.62; for the Albert Twist lease, $45,556.87; for the Jessie L. Twist lease, $43,870.39; and for the Edward C. Twist lease, $49,377.38, a total of $251,366.25. (Tr., p. 48.)

Of course, this amount includes not only the value of the "extensions" but the value of the original leases.

The court refused to permit us to prove the market value of the leases (Tr., p. 70), not only upon the ground that the witness offered was not qualified, but upon the ground that to show the market value was to "assail in this collateral proceeding the judgment of the County Court as to the sufficiency and adequacy of the consideration." (Tr., pp. 70-71.) This is equivalent to holding that gross inadequacy of consideration is immaterial as a matter of law. The court should have heard this evidence.

> "Even though objections to questions are sustained in equity cases, it is the court's duty to have them answered and included in the record so that if the appellate court finds that the chancellor erred the cause need not be remanded to have the testimony retaken."
>
> *Uokle, et al.* v. *Wells, et al.*, 381 Fed. 29.

There is, however, sufficient evidence in the record to disclose the complete inadequacy of the consideration. At least we may determine the value placed upon the extensions by the respondent, the Prairie Oil & Gas Company, by deducting from the amount of $251,000.00 plus, paid by it, the value of the original leases during the remainder of their terms. The production is known, the value of oil is known, and the terms of the leases are fixed. The expenses of operation are established by agreement. Hence, it is a simple question of arithmetical computation to ascertain the net value of the leases during the remainder of their term.

When the petition was filed by the guardian in the Probate Court (Tr., p. 13), the William G. Twist average royalty was 8.53 barrels; the Albert T. Twist was 2.27 barrels, the Edward C. Twist was 2.45, and Jessie L. Twist, 3.95 barrels. This is 10% of the value of the crude oil produced (Tr., p. 13), being a total of 17.2 barrels. Hence, the lessee's production is 9 times the royalty, or 154.8 barrels, on June 5, 1916. On March 5, 1917, when the Prairie took its assignment (Tr., p. 46) it had already, in February, 1917, paid the price mentioned and the daily production was at that time 104.81 barrels (Tr., p. 49).

The Los Angeles Cherokee paid $18,000.00, an increase of 2½ per cent in royalty, and the drilling of certain additional wells as a consideration for the "extensions." The Prairie paid them $251,000.00 plus, assumed the additional royalty and assumed the drilling of the additional wells. There was no development between the 16th day of June, 1916, and the 1st day of March, 1917, by the Los Angeles-Cherokee or any other person (Tr., p. 67).

The William G. Twist lease expired September 28, 1919, and hence, from March 5, 1917, had 936 days to run. The Albert T. Twist lease expired September 3, 1918, and had, therefore, 543 days to run; the Edward C. Twist lease expired March 21, 1920, and therefore had 1111 days to run; and the Jessie L. Twist expired March 21, 1920, having 533 days to run (Tr., p. 12). The production, as we have seen, had fallen off approximately one-third; that is, from 154 barrels to 104 barrels, between the date of the "exten

sion of the leases" and the date of the assignment of the "extension." The market value at the time of the purchase was $1.70 per barrel (Tr., p. 69). Take the William G. Twist lease, producing 8.53 barrels of royalty (Tr., p. 13), multiply this by 9, and we find the lessee's production is 76.77 barrels. Reducing this by one third, we find the production on March 5, 1917, to be 51.18 barrels. At a market price of $1.70 per barrel, this would yield $87.00 per day, to the lessee, or a total in 936 days of $81,432.00.

Applying the same method of computation to each of the other leases, we find a total expected or anticipated production during the remainder of their terms, gross, of $126,946.76. Averaging the expenses of operating over the entire period, as shown by the transcript, pages 46, 48 and 49, we find the daily expense on the William G. Twist lease to be $22.36; on the Albert T., $20.63; on the Edward C., $18.20; and on the Jessie L., $7.63. Multiplying in each instance by the number of days which the lease had yet to run, we find a total production expense of $56,418.04. This leaves a net profit, if the leases maintained their average output, as of the date of the purchase, during the remainder of their terms after the Prairie purchased the assignments, of $70,528.72.

We are giving the Prairie the benefit of the assumption that the leases would not depreciate in production during that period. This the court judicially knows is not true. They had decreased one-third within the period of nine months. It appears that they had decreased to 65 barrels (Tr., p. 49), at the time of the trial, or about five years

after the assignment. However, we are content to assume that the Prairie, through its experienced officers, was able to predict that they would earn the full amount of the profit as shown above during the remainder of the terms of the leases, and that they were content to make no money on that portion of their purchase, but that they paid for the original leases every dollar which they could earn out of them, that is, $70,000.00. If the Prairie did so estimate, then they either made a tremendously bad bargain, or they deemed the market value of the "extensions" greater than the remaining amount paid; that is, approximately $180,000. We cannot assume that the purchaser was engaged in an altruistic enterprise.

We have suggested that the drilling of additional wells is no consideration. There is a duty of diligent development, regardless of contract, on producing oil property.

—*Strange* v. *Hicks*, 78 Okl. 1, 188 Pac. 347;

Pelham Petroleum Co. v. *North*, 78 Okl. 39, 188 Pac. 1049;

Indian Co. v. *McCrory*, 42 Okl. 136, 140 Pac. 610;

Blackwell Oil & Gas Co. v. *Whitesides*, 71 Okl. ...., 174 Pac. 573;

Brewster v. *Lanyon Zinc Co.*, 140 Fed. 801, 72 C. C. A. 213.

In spite of the refusal of the court to permit us to prove the adequacy of the consideration, we believe that our computation establishes that the respondent paid more than ten times as much for the extensions as the minors

received; and this within nine months of the date of the "extensions" and after the production had decreased approximately one third. We make no point of this decrease in production, except to say that it is off set in some measure by the increase in the price of oil. If they paid ten times as much as the minors received, they can hardly be heard now to say that the consideration paid to the minors was not grossly inadequate.

Irregularity of Proceedings.

Even if the court should determine that the decisions of the Supreme Court of Oklahoma will not be followed as a rule of property and that the County Court had jurisdiction to proceed, we call attention to the following obvious irregularities in the sale proceedings which may be observed by reference to Exhibits "B," "C," "D," "E," "F," "G," "H," "I," "J," "K," "L." (Tr. 302, pp. 10-34; Tr. 301, pp. 8-9.)

(a) In the petition, instead of asking for the right to sell a valuable property of the minors, the guardian sets out that she and the Los Angeles Cherokee Oil Company have entered into a tentative agreement which she desires the court to approve.

(b) The guardian appears not only as the guardian of one minor, dealing with one estate, but as the guardian of three minors, who own their own allotments, and who together with herself own the lands of William G. Twist, and also as the administratrix of Wm. G. Twist, deceased a

proceeding contrary to the rule announced in *Jackson* v. *Carroll*, 207 Pac. 735 (Okla.).

(c) The petitioner seeks to have the agreed sum of money to be paid for the leases pro rated according to the average royalty on the different tracts. This arrangement does not take into consideration the number of wells on each tract, the age and condition of each well, the extent of undeveloped acreage of each tract, nor the time of termination of the original leases. Each of these items was an important factor in determining the value of the extension sold. The Wm. G. Twist lease contained more than 80 acres and expired September 28, 1919; the Albert Twist lease contained 30 acres, and expired September 3, 1918; the Edward C. Twist contained 30 acres, and expired March 21, 1920; the Jessie L. Twist lease contained 80 acres, and expired December 7, 1918. It is obvious that the mere average current royalty could not determine the value of the various extensions respectively, and that this was but an arbitrary agreement, without regard to value.

(d) The prayer is that the guardian be "permitted to enter into an agreement extending the term," obviously with the Los Angeles Cherokee Oil Company.

(e) The court, in its "order setting date of hearing petition for sale of extension of leases," mentions "the petition praying leave of the court to extend the lease" and orders that the petition be set for hearing on the 10th day of June, 1916, at 10:30 o'clock a. m. —not that the extensions be then sold.

(f) There was no order of sale.

(g) The notice was not published, but posted in three public places, "publication being not practicable."

(h) On the 16th day of June, Mrs. Welty, as the guardian and as the administratrix, files report and return on sale of extension of oil and gas mining leases, to the Los Angeles Cherokee Oil Company. In this report she says (Tr. #302, pp. 15-17), that she has executed and delivered certain oil and gas mining leases to the Los Angeles Cherokee Oil Company "in accordance with the prior order of this court setting date for hearing of her petition for sale of said oil and gas lease." The cash bonus, it is said, is to be pro rated according to certain agreements already entered into between the guardian and the Los Angeles Cherokee Oil Company.

(i) The order of court refers to the fact that the guardian filed a petition "praying for the extension of the term of certain oil and gas leases," and finds that "due and proper notice of said *hearing* has been given." The court was of the same view as we are, that there had been no notice of *sale*, but notice of *hearing* of petition. The court also finds that oil and gas leases had been executed and that the guardian is satisfied that the proposition is beneficial and should be approved, and that the guardian should enter into the agreement extending the terms of the leases. Immediately the court recites that it has examined the agreements and approves and confirms the same.

(j) The "notice of sale," so called (Tr. p. 33), purports to give notice that in pursuance of an order of the County Court, sale would be had at 10:30 a. m., on the 16th day of June, 1916, in the County Court room in Tulsa "*at which time and at said place any person may appear to contest the sale of such extensions or show cause why such lease or leases should not be extended* from the date of the expiration of the present leases * * * and if any objections there be same to be filed in writing at the same time and place." If notice of sale in proper terms had been given, the guardian had no authority to give it, because the court had not yet heard the petition, nor had the court directed that a sale be had. The court did not sign the notice of sale. That was a function assumed by the guardian and administratrix. The court had not authorized a sale, and therefore had not authorized a notice of sale. The court had merely made an order setting a date upon which the petition would be heard. (Tr. #302, pp. 14-15.) The guardian had no authority, upon this character of order, to advise the public that a sale would be had upon that date. We suggest that it is obvious no contemplating purchaser would be present on that day. The only persons who would be attracted by such a notice would be those who desired to present an objection to the order of sale. In other words, persons who not only did not desire to purchase, but who desired to prevent others from purchasing. The cases of *Clauton* v. *Tibbens*, 298 Fed. 18; *Jackson* v. *Gates Oil Company*, 297 Fed. 549, and *Duff* v. *Keaton*, 124 Pac. 291, all dealt with sales of leases prior to the adoption of Rule 9 of the Supreme Court; there was, nevertheless, an order of sale;

after which the guardian made a return of sale, pursuant to the order, stating that she had secured the best purchaser and the highest price obtainable, and the court then approved and confirmed the lease. In each of those there was a compliance, as held by the court in *Duff* v. *Keaton*, with the procedure prescribed for the sale of personal property within the State of Oklahoma. The present case discloses no effort to comply with any of the customs or forms commonly observed in such cases.

If the court had jurisdiction, nevertheless the proceeding was at best decidedly irregular.

Fraud.

The evidence with relation to fraud appears in the transcript, on pages 52 to 63, inclusive. It discloses that the guardian of the minors was a widow, in poor health. Pitt and Anderson (doubtless the same persons who represented the Los Angeles Cherokee Oil Company in their negotiations with the Prairie for the sale of the leases (Tr., p. 48)) urged upon her the expediency of executing an extension, so that the lease should continue as a perpetual right in the land. They became her bondsmen in the guardianship. They stated positively to her that the sum of $18,000.00 was more than the extensions were worth. They informed her that she was not doing right by her wards if she did not accept this sum. They intimated that the County Court would not look with favor upon her refusal to execute these agreements. They advised that the eyes of other persons were upon the guardianship, expecting her to

fear that the court would remove her and place the affairs of her children in strangers' hands. We were not permitted to show what representations were made to her son and communicated to her, although we endeavored to prove those representations (Tr., pp. 64-65). The petitions were prepared by the Los Angeles Cherokee Oil Company's attorney, Mr. Pitt stating that he did not think it was necessary for her to have an attorney (Tr., p. 63). There was no person present the day of the purported sale except Rice or Lyon, one of the attorneys for the company; Mr. Pitt, the company's agent; and the guardian.

We have before discussed the inadequacy of consideration, and in that connection, have disclosed the fact that the value of the extensions, as estimated by the Prairie for the purpose of purchase, and as actually paid for in cash, was approximately $180,000.00. Positive statements were made by the agents of the Los Angeles-Cherokee Company to the effect that $18,000.00 was more than they were worth (Tr., p. 58). We must assume that the verified petition of the guardian was induced by this positive statement, and that her actions were influenced thereby. The men making it must have had a knowledge of the falsity of the statements which they made. They were in a position to know the value of the leases; the mother is not shown to have had such knowledge; and she acted without the aid of counsel, upon the suggestion of parties adversely interested.

"Representations as to value, deliberately incorrect, and fraudulently made, are actionable."

—*Lumber Co.* v. *Ott*, 142 U. S. 622, 35 L. ed. 1136;

Hood v. *Wood*, 61 Okl. 294, 161 Pac. 210;

Wedine v. *Aldred*, 57 Okl. 391, 157 Pac. 305;

Dalton v. *Hooper* (Okl.), 177 Pac. 571.

The Prairie Oil & Gas Company pleaded it was a bona fide purchaser. That, however, "is an affirmative claim and must be proven by the party who seeks its benefit."

—*Barnett* v. *Kunkel* (8th C. C. A.), 259 Fed. 394;

Wright-Blodgett Co. v. *U. S.*, 236 U. S. 397, 59 L. ed. 637.

There was no evidence offered to support this plea except the agreement that Dana H. Kelsey would testify, if present, that he acted for the Prairie in the purchase, in connection with Fred S. Cook, and that Mr. Kelsey would testify that he knew nothing of the transactions between the guardian and the Los Angeles Cherokee Oil Company, and that Anderson and Pitt did not inform him, at the time of the examination of the abstracts, of the matters, conversations or transactions between the Los Angeles Cherokee Oil Company and the guardian. Fred S. Cook is absent without explanation. There is no evidence in the record that he was unaware of the nature of the transactions, or of the conversations between Pitt and Anderson, on the one hand, and the guardian on the other.

Moreover, the known facts are sufficient notice that some improper activities had existed. The Prairie knew that it was buying for approximately $180,000.00 property

which had depreciated in value and which had been purchased for $18,000.00 within seven or eight months before. Bear in mind that no additional development or improvement had occurred. The Prairie knew that the probate rules of the Supreme Court had not been complied with, in that there was no competitive bidding, no order of sale, and no proper notice of sale. In the presence of the glaring irregularities, and with positive knowledge of the vast discrepancy in the prices paid, a purchaser cannot contend that he is in the exercise of good faith. He has shut his eyes to obvious facts and closed his ears against information.

We contend, moreover, that there is fraud on the face of the entire proceedings.

One must be impressed with the view that it was fraudulent to insert in the agreement the fact that the drilling of an additional well, within six months, was a part of the consideration. This was no consideration. It was but the agreement to do that which they were already bound to do. The increase in royalty was but another subterfuge and pretended consideration. For the leases under which the Los Angeles Cherokee claimed were governed by the regulations of the Department of the Interior, being leases upon minor Indian land. Under the regulations of April 20, 1908, section 15A: "The minimum rate of royalty on oil on and after May 1, 1908, shall be 12½ per cent of the gross proceeds of the oil produced from said leased premises." Whether this condition could have been enforced against the lessee or not, the regulation serves to indicate that any changed or extended lease which might

come within the jurisdiction of the Department of the Interior would have contained the 12½ per cent royalty provision. That this is the customary royalty will not be denied. Moreover, it was but a trifling consideration at best that the royalty be increased 2½% during the remaining short term of the leases. What the royalty was to be after the leases expired is immaterial.

The face of the notice itself is so ambiguous that it must be construed as fraudulent. It was not the intention of the parties that a public sale should be had; the whole arrangement was a private agreement; the only order of the court prior to the sale was the order that the petition should be heard; and the petition was for leave to execute the extension agreement to the Los Angeles Cherokee Oil Company. The price, terms and conditions had all been agreed upon. The agreements were executed privately. There was no hearing had, as provided by the order of the court; the notice purported only to give to those interested an opportunity to object to the granting of the petition; that is to say, to object to the granting of the extension to the Los Angeles Cherokee Oil Company; not to give to purchasers an opportunity to bid.

In the nature of things an extension of the old lease could only be made to the person who then owned it. A stranger could not bid upon the extension of a lease owned by some one else. In order to be absolutely fair to the minors, it perhaps would have been necessary for a new lease to be sold, effective upon the expiration of the old, on each tract. But the face of the notice itself, the method of

conducting the sale, and the obvious irregularities, impress us with the view that the proceeding was deliberately designed to secure the property without the presence of any other bidders, and to conceal from the public at large the nature of the proceeding to be had on June 16, 1916; while, in a measure, appearing to comply with the laws of the state.

Conceding the gross inadequacy of consideration, the irregularities in the sale, and the fraud and unfair dealings, the case *of Schroeder* v. *Young*, 161 U. S. 334, 40 L. ed. 721, is peculiarly applicable. In that case, as in the case at bar, a judicial sale was the subject of controversy. The sale had been confirmed and a suit in equity brought to set aside the sale. The property had been sold for a little more than $17000.00, while the trial court found it to be worth $26,000.00. The court, referring to the argument that the proceedings were irregular, observed in the language of Mr. Justice Bradley, in *Graffam* v. *Burgess*, 117 U. S. 180, 29 L. ed. 839:

> "It is insisted that the proceedings were all conducted according to the forms of law. Very likely. Some of the most atrocious frauds are committed in that way. Indeed the greater the fraud intended the more particular the parties to it often are to proceed according to the strictest forms of law."

In the opinion by Mr. Justice Brown, it is said:

> "Plaintiff relied mainly for a decree in this case upon the fact that his interest in the property in question, which the trial court found to be worth $26,000.00, was sacrificed at these several judicial sales to pay a judgment of little more than $17000.00."

It will thus be seen that the principal allegation was the inadequacy of consideration. It was this fundamentally upon which the court of equity seized; it is upon the fact that a wrong has been done that equity bases the vigilant exercise of all of its powers, to protect the wronged.

The court in this case, however, proceeded to find certain irregularities, none of which amounted to a fatal defect, but among which are recited the following:

(a) The property was sold to Stephens and Schroeder, who had acted as attorneys for the judgment creditor throughout the entire transaction. Compare this to the instant case, where the guardian was not represented by counsel, but the attorneys for the purchasing company carried the entire transaction through the courts.

(b) "At neither of the sales was there any other bidder and no other person present than Stephens and the officer conducting the sales, and we can readily appreciate how inevitable it was that the property should be sacrificed." In that case, however, there was an opportunity for other bidders to appear. In the present case there was not only no other bidder present; there was no opportunity given to bidders to be present. The only right which the County Court granted by its order was the right to appear and show cause why an order of sale should not be made.

(c) Another reason was that there was an irregularity with regard to the amount of the levy on one execution. Compare this with the irregularities in the sale before the court, *viz.*, the failure to observe Rule 9, the bulk sale, the order to lease to a particular lessee for a specified price.

These are the chief irregularities which the court considered in that case, and of them, taken with the gross inadequacy of consideration, it is said:

> ***"It would be a reproach to a court of equity if it could not lay hold of such a transaction as this is shown to be and set aside a sale of property acquired under the forms of law, and in defiance of natural justice."***

How much more reasonable to set aside the transaction had with helpless minors; not only "in defiance of natural justice," but in defiance of the rules of procedure prescribed by two sovereign governments for the protection of the particular class of persons here affected. Can there be any doubt of inadequacy of consideration here? If so, the court should have permitted us to prove its inadequacy. In that direction we were not permitted to proceed.

In *Wheeler & Motter Mercantile Co.* v. *Wright*, 64 Okl. 97, 166 Pac. 184, the Supreme Court of Oklahoma said in part:

> "A judgment sale will not be set aside for mere inadequacy of price unless it is so great as to shock the conscience. A sale may be set aside for gross inadequacy of price, if accompanied by circumstances showing unfairness in the conduct of the successful bidder, or any circumstances sufficient to raise a presumption of fraud" (syllabus, paragraph 1).

Again, in *Schroeder* v. *Young*, *supra*, the court says:

> "While mere inadequacy of price has rarely been held sufficient itself to justify setting aside a judicial sale of property, courts are not slow to seize upon other circumstances, impeaching the fairness of the transaction, as a cause for vacating it, especially if the inade-

quacy be so gross as to shock the conscience. If the sale has been attended by any irregularity, as *if several lots have been sold in bulk where they should have been sold separately*, or sold in such manner that their full value could not be realized; *if bidders have been kept away; if any undue advantage has been taken to the prejudice of the owner of the property, or he has been lulled into a false security;* or, if the sale has been collusively, or in any other manner, conducted for the benefit of the purchaser, and the property has been sold at a greatly inadequate price—the sale may be set aside, and the owner may be permitted to redeem."

We call particular attention to the reference to the sale in bulk as grounds for setting aside a judicial sale.

This is a judicial sale. Hence the importance of the decision of the Supreme Court of Oklahoma in *Jackson* v. *Carroll*, 86 Oklahoma 230. There the fact that a sale of separate interests was sold in bulk was made the basis of a successful collateral attack upon the judgment of the County Court. The facts were similar to the sale in the case at bar. This recognition of the doctrine by the Supreme Court of the United States, coupled with the express decision of the Supreme Court of Oklahoma, should be sufficient in our judgment to warrant this court in reversing upon the sole ground that the interest of each of three minors in his own allotment was sold jointly with the interests of those three and two others in the allotment of the deceased father, all at a bulk price, for one consideration, without determining the value of each one, except by an arrangement suitable to the purchaser himself, and without the court's passing upon the proper valuation to be given to each interest.

In other words, we have here, for the benefit of the purchaser alone, a lump sum sale of eight different individual properties; namely, three individual allotments and the separate interests of five different persons in a fourth allotment, all for the gross sum of $18,000.00 and a certain advance in royalty.

We believe the rule in these cases is salutary, and justifies our position here. It is a complete answer to the contention which will doubtless be made, that the question of value was directly determined by the probate court, and that its judgment that the price is adequate is sufficient.

Moreover, there is a clear distinction between proceedings *ex parte* and proceedings adversary, when we consider the force and effect of the judgments rendered, and the character of proceedings necessary, to overthrow such judgments. In an adversary proceeding, fraud or perjured testimony is not sufficient to overthrow the judgment. The fraud must be extrinsic to the proceedings, because the court passes upon the question of the evidence with both parties before it, and determines whether there had been perjury committed. This, however, was an *ex parte* proceeding. A guardian represented herself and the minors' interests. She made the petition. It was not contested, and her petition was furthered and fostered by those persons adversely interested. There was no evidence submitted. In such a proceeding fraud or false testimony vitiates the entire proceeding. Compare, *United States* v. *Minor*, 114 U. S. 233, with, *United States* v. *Throckmorton*, 98 U. S. 61.

The fraud here was both extrinsic and intrinsic.

Moreover, the irregularities are apparent on the fac
of the record. Coupled with inadequacy of consideration
they are sufficient grounds for equity to interfere. And the
are sufficiently obvious to prevent the defense of bona fide
by the respondent.

We respectfully urge therefore:

(1) That the decision of the Eighth Circuit Court o
Appeals be reversed, as well as that of the trial court; and

(2) If the court shall hold the Oklahoma decision
applicable, then that this court render such judgment a
should be rendered upon the record, declaring the lease
void and remanding for an accounting; and

(3) If said "extension leases" shall be held voidable
only, then that this cause be remanded for new trial; or

(4) That the court render such other and further orde
as shall protect the interests of the petitioners herein an
restore them to the rights which they have lost by reason
of the judgments of the District Court and of the Circu
Court of Appeals.

Respectfully submitted,

James S. Watson,
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Office Supreme Court, U. S.
FILED
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No. 302

In the Supreme Court of the United States

October Term, 1926.

EDWARD C. TWIST, ALBERT T. TWIST AND JESSIE L. PAYNE, *NEE* TWIST, *Petitioners*,

VERSUS

PRAIRIE OIL & GAS COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF OF PETITIONERS.

JAMES S. WATSON,
PAUL PINSON,
DANIEL HADEN LINEBAUGH,
Attorneys for Petitioners.

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IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1926

No. 302.

EDWARD C. TWIST, ALBERT T. TWIST AND JESSIE L. PAYNE, *NEE* TWIST, *Petitioners,*

vs.

PRAIRIE OIL & GAS COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF *of* PETITIONERS.

Statement of the Case.

Petitioners, owning an undivided six fifteenths interest in the lands of their deceased father, William G. Twist, sue to cancel certain "extension leases" executed during their minority to the Los Angeles-Cherokee Oil Company, and by it assigned to the respondent, Prairie Oil & Gas Company. The claim is for damages for continuing trespass, for cancellation of recorded leases as clouds upon title, injunction and quieting of title (Tr., p. 9).

The suit was instituted in the state court, and by virtue of the Oklahoma code, joined an action for damages as one cause of action, with the equitable claims referred to as a second cause of action.

The so-called "extension leases" were executed by the guardian in the course of certain proceedings appearing at pages 11-20 of the transcript. The original lease expired on September 28, 1919. Other "extension leases," including the one involved in No. 301, now before the court, were included in the same petition, and it was contended that the extension agreements (Tr., pp. 30-31) were secured by fraud, duress and false dealings (Tr., p. 6). Also that the proceedings were insufficient to authorize the court to approve such a sale in behalf of minors, by virtue of Probate Rule 9, promulgated by the Supreme Court of Oklahoma on June 11, 1914 (Tr., p. 6).

The respondent removed the case to the Federal Court on the ground of diversity of citizenship and caused it to be docketed as a case in equity. Respondent answered (Tr., p. 39) and prayed "that the court, by its decree, declare and determine that the defendant's title to said oil and gas lease, as modified and extended, is good, valid and subsisting as against the claim of the plaintiff, and that its title thereto be quieted as against said claims."

The facts upon which an accounting could be had, and all other facts necessary to a decision, except on the question of fraud and inadequacy of consideration, were stipulated (Tr., pp. 43-51). The parties and the trial court treated the case as one in equity, and the decree granted only equitable relief (Tr., pp. 41-42).

The Court of Appeals, when the matter was presented, held in its opinion (Tr., p. 94) in substance, that only the legal cause of action could be maintained in the Federal

Court, and that the equitable cause of action could not, since there was an adequate remedy at law, the plaintiffs being out of possession, and the defendant in possession, and that by reason of the fact that there was no waiver of jury, as provided by law, the court had no jurisdiction to review any question except those which arise on process, pleadings or judgment. The court refused to review the evidence and affirmed the judgments in favor of respondent on the ground that the pleadings were sufficient to support them.

ARGUMENT *and* AUTHORITIES.

If this was a suit in equity, then the appeal was the proper remedy, and the appellate court should have reviewed the evidence as well as the pleadings and the judgment. The relief sought by way of cancellation of leases, injunction against continuing trespass, and to quiet title, are all of an equitable nature.

Kellogg v. Schauble, 273 Fed. 1012;

Fay v. Hall, 249 Fed. 418 (8th Cir. Appls.);

Black, Recission and Cancellation, Vol 2, Sec 655;

General Film Co. v. Sampliner, 252 Fed. 444;

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Tuscola-ine Mining Co. v. Original Section 6-ine Mining Co., 260 Fed. 724;

Becker Franz Co. v. Shannon Co., 256 Fed. 522;

Bispham's Prin. of Eq. (8th ed.), Sec. 31;

Story, Equity Jur. (14th ed.), Vol. 2, Secs. 932 933;
9th Corpus Juris, p. 1160.

The remedy at law was in the plaintiff, for possession and to recover damages, but it was "not adequate, by no means as practical and efficient as a remedy in equity."

—*Chanslor Canfield Co. v. U. S., supra* (9th Circuit Court of Appeals).

If a court of equity has jurisdiction, it may also dispose of the legal title.

—*Chanslor Canfield Co. v. U. S., supra;*

Becker Franz Co. v. Shannon Co., supra (9th Circuit Court of Appeals);

Equity Rule 23.

Even if the remedy at law be deemed adequate, equity may proceed in the absence of objection. It is not a question of jurisdiction, but of procedure, which may be waived.

—Enc. U. S. Supreme Ct. Rep., Vol. 5, p. 826;

Peregoy v. Dodge, 163 U. S. 161, 41 L. ed. 113;

Ashland Waterworks Co. v. City of Ashland, 215 Fed. 492;

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Green v. Turner, 98 Fed. 256;

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Twenty one Mining Co. v. Original Sixteen to one Mining Co., supra;

Pacific Coal & Transportation Co. v. Pioneer Mining Co., 205 Fed. 577, 9th C. C. A.;

Fay v. *Hill*, 249 Fed. 415, 8th C. C. A.;
Hansell v. *Purnell*, 1 Fed. (2nd) 266.

And the fact that an action for damages for trespass was included in the plaintiff's bill, does not oust equity of jurisdiction.

—*Becker Franz Co.* v. *Shannon Co.*, *supra*;
Twenty-one Mining Co. v. *Original Sixteen-to-one Mining Co.*, *supra*;
Chanslor Canfield Co. v. *U. S.*, *supra*.

The fact that there was an agreed statement of fact, as to every allegation except fraud and inadequacy of consideration, takes the case out of the rule as to trial of questions of fact without written waiver of jury.

—*Ford* v. *Grimmett*, 278 Fed. 140.

Quotations from various cases above cited appear in the brief appended to the petition for the writ.

Sections 274a and 274b of the Judicial Code, and Equity Rule 22, clearly contemplate that causes erroneously docketed shall be transferred by the trial court. In this case the appellate court substantially accomplished a transfer of a cause, treated by the trial court and by all parties as one in equity, to the law docket, and consequent dismissal. If transferred by the trial court, the right to amend the pleadings under section 274a is granted at any stage of the pleadings. But the cause must proceed and be determined upon such amended pleadings, and as no opportunity is afforded in the appellate court for amendment, this right has been denied us.

The defendant's answer, invoking equitable relief, changed the proceeding "from one at law to one in equity, with all the consequences flowing therefrom."

—*Liberty Oil Company* v. *Condon National Bank*, 67 L. ed. 232; 260 U. S. 234.

Prior to the enactment of Rule 22, a suit erroneously commenced on the equity side must be dismissed. And the decree of dismissal must expressly adjudge that it is rendered for that reason, "to the end that the complainant may resort to his action at law for any damages he may sustain if he is so advised."

—*Indian Land & Trust Co.* v. *Shoenfeldt*, 133 Fed. 484.

Unless the transfer may be accomplished only in the trial court, Rule 22 and sections 274a and 274b have complicated, rather than simplified, the practice. This is not the spirit of these enactments. They

> "manifest a purpose on the part of Congress to change from a suit at law to one in equity, and the reverse, with as little delay and as little insistence on form as possible, and are long steps toward code practice."
>
> —*Liberty Oil Company* v. *Condon Bank*, *supra*.

The opinion in that case is in accord with the decisions in:

Hansell v. *Parnell*, 1 Fed. (2nd) 266, 8th C. C. A.;

Pacific Coal & Transportation Co. v. *Pioneer Mining Co.* 295 Fed. 577, 9th C. C. A.;

Vidal v. *Co.*, 276 Fed. 856 7, 2nd C. C. A., syllabus;

Fay v. *Hill*, 249 Fed. 415, 8th C. C. A.

So much for the question of practice. If the court shall see fit to review the decisions of the trial court and of the 8th Circuit Court of Appeals, in the interest of expediency the case should also be determined on the merits.

—*Liberty Oil Co.* v. *Condon National Bank, supra.*

We, therefore, pass to a consideration of the merits of the case:

The petitioners, Cherokee Indian allottees, were wards of the United States and restricted during their minority.

—*Truskett* v. *Closser*, 236 U. S. 223.

The power to lease, on the date specified, was conferred by section 6 of the Act of May 27, 1908 (35 Stat. at L. 312), on the probate courts of the state. These courts became federal instrumentalities for the removal of this restriction but the procedure for leasing was to be prescribed by the state alone. The right to regulate procedure includes the power to enforce compliance, and implies jurisdiction to determine the effect of non-compliance.

Section 2, article 7, of the Oklahoma Constitution, is in part as follows:

> "The original jurisdiction of the Supreme Court shall extend to a general superintending control over all inferior courts and all commissions and boards created by law."

By request of the Interior Department of the United States (see report, Commissioner Indian Affairs, 1914, pp. 50-55) the Supreme Court of Oklahoma promulgated cer-

tain rules for the control of the probate courts, Rule 9 being in these words:

> "No oil and gas or other mineral lease covering lands belonging to minors or incompetents will be approved except after sale in open court to the highest and best responsible bidder. All petitions for the approval of oil and gas leases shall be filed at least five days before the same are sold, as provided herein, and notice of such sale must be given by posting and by publication, where publication is practicable, and shall be on ..... of each ....."

In October, 1915, the rules were construed by the Supreme Court of Oklahoma. They were said to be local statutes, of the same effect as if enacted by the legislature. It was held that the probate courts had no power or authority, that is to say, no jurisdiction, to ignore or dispense with these rules.

—*Freeling* v. *Kight*, 49 Okl. 202, 152 Pac. 362.

That decision had been rendered approximately eight months before the occurrence herein involved. Kight, county judge, was compelled by mandamus to observe the rules of which Rule 9 above is a part.

In *Ex parte Virginia*, 25 L. ed. 669-673, 100 U. S. 313, it is said:

> "It is well settled that the writ of mandamus will issue to correct the action of subordinate or inferior courts or judicial officers *where they have exceeded their jurisdiction*, and there is no other adequate remedy."

Also:

> "In what cases such a writ (mandamus) is warranted by the principles and usages of law, it is not always easy to determine. Its use has been very much extended in modern times and now it may be said to be an established remedy to oblige inferior courts and magistrates to do that which they are in theory and by virtue of their office bound to do. *It does not lie to control judicial discretion*, except when that discretion has been abused; but it is a remedy when the case is outside of the exercise of this discretion and *outside the jurisdiction of the court* or officer to which or to whom the writ is addressed."

The rules, by this decision, are held to be, not directory, but mandatory. In other words, the probate courts of Oklahoma are without jurisdiction to dispense with these rules.

Following the *Knight* case, as we observed in our former brief, the Supreme Court of Oklahoma, in *Winona Oil Co. v. Barnes*, 83 Okl. 248, and *Carlisle* v. *National Oil Development Co.*, 83 Okl. 217, held that probate courts had no jurisdiction to order or confirm a transaction which was not in substantial compliance with Rule 9, requiring a sale in open court to the highest and best bidder, after public notice thereof; and that such confirmation and sale were absolutely void.

These decisions determine that the rule is a local statute, and that the court is without jurisdiction to disregard it.

The federal courts are bound by the local construction of state laws, especially when the interpretation antedates the transaction involved; and this is particularly true where

the jurisdiction of inferior state tribunals is the subject in question.

—*Kuhn* v. *Fairmount Coal Co.*, 215 U. S. 349;
St. L. & S. F. R. Co. v. *Quinette*, 251 Fed. 773;
Messenger v. *Anderson*, 225 U. S. 436;
Barnett v. *Kunkel*, 259 Fed. 394;
Commercial Bank v. *Buckingham*, 5 How. 317, 12 L. ed. 169;
Bulkham v. *Woodstock Iron Co.*, 154 U. S. 177;
Leffingwell v. *Warren*, 67 U. S. 599;
Standard Oil Co. v. *Missouri*, 224 U. S. 270;
Freeport Water Co. v. *Freeport*, 180 U. S. 587.

In a sense Rule 9 is a federal restriction upon the alienation of Indian land. The sovereign guardian of the petitioners procured its enactment by the state court. It was designed to prevent the existence of the situation here presented. It should therefore be so construed as to destroy the evil at which it was aimed. It is of no value unless its violation shall invoke a penalty. The penalty prescribed is not confiscatory, since the decisions require reimbursement for the expense of development.

—*Barnes* v. *Winona Oil Co.*, 83 Okl. 253, 200 Pac. 985.

Conveyances violating federal restrictions generally are held void, and this should furnish an additional reason for following the local decisions here.

—Act May 27, 1908, Sec. 5;
Truskett v. *Classer*, *supra*;
Heckman v. *U. S.*, 224 U. S. 413;
Goat v. *U. S.*, 224 U. S. 458.

If the Oklahoma decisions are to be followed, and if the court shall entertain our appeal, then the judgment should be reversed and judgment rendered in favor of petitioners, with instructions to the court to hear the matter further solely upon the question of accounting for oil and gas removed under the extension leases since the date of the trial in the court below.

If, however, the court shall hold that the Oklahoma decisions are inapplicable, nevertheless the extension leases should be cancelled by reason of the fact that they were obtained for a grossly inadequate consideration, in an irregular manner, and that they are tainted with fraud and unfair dealings.

Gross Inadequacy of Consideration.

The extension of lease here involved was one of a number executed by virtue of a petition (Tr., p. 15) and an order of the County Court of Tulsa County (Tr., p. 18) in consideration of the sum of $18,000.00 in cash, increase of the royalty from ten (10) per cent to twelve and one half (12½) per cent, and the drilling of a well on each of the tracts within six months from the date thereof, June 16, 1916. At that time oil was of the value of $1.35 per barrel (Tr., p. 47). On March 5, 1917, these leases were assigned to the Prairie Oil & Gas Company, they paying for the William G. Twist lease, $112,561.62; for the Albert Twist lease, $45,556.87; for the Jessie L. Twist lease, $43,870.39; and for the Edward C. Twist lease, $49,377.38, a total of $251,366.25. (Tr., p. 48.)

Of course, this amount includes not only the value of the "extensions" but the value of the original leases.

The court refused to permit us to prove the market value of the leases (Tr., p. 70), not only upon the ground that the witness offered was not qualified, but upon the ground that to show the market value was to "assail in this collateral proceeding the judgment of the County Court as to the sufficiency and adequacy of the consideration." (Tr., pp. 70-71.) This is equivalent to holding that gross inadequacy of consideration is immaterial as a matter of law. The court should have heard this evidence.

> "Even though objections to questions are sustained in equity cases, it is the court's duty to have them answered and included in the record so that if the appellate court finds that the chancellor erred the cause need not be remanded to have the testimony retaken."
>
> —*Uekle, et al.* v. *Wills, et al.*, 381 Fed. 29.

There is, however, sufficient evidence in the record to disclose the complete inadequacy of the consideration. At least we may determine the value placed upon the extensions by the respondent, the Prairie Oil & Gas Company, by deducting from the amount of $251,000.00 plus, paid by it, the value of the original leases during the remainder of their terms. The production is known, the value of oil is known, and the terms of the leases are fixed. The expenses of operation are established by agreement. Hence, it is a simple question of arithmetical computation to ascertain the net value of the leases during the remainder of their term.

When the petition was filed by the guardian in the Probate Court (Tr., p. 13), the William G. Twist average royalty was 8.53 barrels; the Albert T. Twist was 2.27 barrels, the Edward C. Twist was 2.45, and Jessie L. Twist, 3.95 barrels. This is 10% of the value of the crude oil produced (Tr., p. 13), being a total of 17.2 barrels. Hence, the lessee's production is 9 times the royalty, or 154.8 barrels on June 5, 1916. On March 5, 1917, when the Prairie took its assignment (Tr., p. 46) it had already, in February, 1917, paid the price mentioned and the daily production was at that time 104.81 barrels (Tr., p. 49).

The Los Angeles-Cherokee paid $18,000.00, an increase of $2\frac{1}{2}$ per cent in royalty, and the drilling of certain additional wells as a consideration for the "extensions." The Prairie paid them $251,000.00 plus, assumed the additional royalty and assumed the drilling of the additional wells. There was no development between the 16th day of June, 1916, and the 1st day of March, 1917, by the Los Angeles-Cherokee or any other person (Tr., p. 67).

The William G. Twist lease expired September 28, 1919, and hence, from March 5, 1917, had 936 days to run. The Albert T. Twist lease expired September 3, 1918, and had, therefore, 543 days to run; the Edward C. Twist lease expired March 21, 1920, and therefore had 1111 days to run; and the Jessie L. Twist expired March 21, 1920, having 533 days to run (Tr., p. 12). The production, as we have seen, had fallen off approximately one-third; that is, from 154 barrels to 104 barrels, between the date of the "exten

sion of the leases" and the date of the assignment of the "extension." The market value at the time of the purchase was $1.70 per barrel (Tr., p. 69). Take the William G. Twist lease, producing 8.53 barrels of royalty (Tr., p. 13), multiply this by 9, and we find the lessee's production is 76.77 barrels. Reducing this by one third, we find the production on March 5, 1917, to be 51.18 barrels. At a market price of $1.70 per barrel, this would yield $87.00 per day, to the lessee, or a total in 936 days of $81,432.00.

Applying the same method of computation to each of the other leases, we find a total expected or anticipated production during the remainder of their terms, gross, of $126,946.76. Averaging the expenses of operating over the entire period, as shown by the transcript, pages 46, 48 and 49, we find the daily expense on the William G. Twist lease to be $22.36; on the Albert T., $20.63; on the Edward C., $18.20; and on the Jessie L., $7.63. Multiplying in each instance by the number of days which the lease had yet to run, we find a total production expense of $56,418.04. This leaves a net profit, if the leases maintained their average output, as of the date of the purchase, during the remainder of their terms after the Prairie purchased the assignments, of $70,528.72.

We are giving the Prairie the benefit of the assumption that the leases would not depreciate in production during that period. This the court judicially knows is not true. They had decreased one third within the period of nine months. It appears that they had decreased to 65 barrels (Tr., p. 49), at the time of the trial, or about five years

after the assignment. However, we are content to assume that the Prairie, through its experienced officers, was able to predict that they would earn the full amount of the profit as shown above during the remainder of the terms of the leases, and that they were content to make no money on that portion of their purchase, but that they paid for the original leases every dollar which they could earn out of them, that is, $70,000.00. If the Prairie did so estimate, then they either made a tremendously bad bargain, or they deemed the market value of the "extensions" greater than the remaining amount paid; that is, approximately $180,000. We cannot assume that the purchaser was engaged in an altruistic enterprise.

We have suggested that the drilling of additional wells is no consideration. There is a duty of diligent development, regardless of contract, on producing oil property.

—*Strance v. Hicks*, 78 Okl. 1, 188 Pac. 347;

Pelham Petroleum Co. v. North, 78 Okl. 39, 188 Pac. 1049;

Indian Co. v. McCrary, 42 Okl. 136, 140 Pac. 610;

Blackwell Oil & Gas Co. v. Whitesides, 71 Okl. . . . , 174 Pac. 573;

Brewster v. Lanyon Zinc Co., 140 Fed. 801, 72 C. C. A. 213.

In spite of the refusal of the court to permit us to prove the adequacy of the consideration, we believe that our computation establishes that the respondent paid more than ten times as much for the extensions as the minors

received; and this within nine months of the date of the "extensions" and after the production had decreased approximately one third. We make no point of this decrease in production, except to say that it is off-set in some measure by the increase in the price of oil. If they paid ten times as much as the minors received, they can hardly be heard now to say that the consideration paid to the minors was not grossly inadequate.

Irregularity of Proceedings.

Even if the court should determine that the decisions of the Supreme Court of Oklahoma will not be followed as a rule of property and that the County Court had jurisdiction to proceed, we call attention to the following obvious irregularities in the sale proceedings which may be observed by reference to Exhibits "B," "C," "D," "E," "F," "G," "H," "I," "J," "K," "L." (Tr. 302, pp. 10-34; Tr. 301, pp. 8-9.)

(a) In the petition, instead of asking for the right to sell a valuable property of the minors, the guardian sets out that she and the Los Angeles Cherokee Oil Company have entered into a tentative agreement which she desires the court to approve.

(b) The guardian appears not only as the guardian of one minor, dealing with one estate, but as the guardian of three minors, who own their own allotments, and who together with herself own the lands of William G. Twist, and also as the administratrix of Wm. G. Twist, deceased, a

proceeding contrary to the rule announced in *Jackson* v. *Carroll*, 207 Pac. 735 (Okla.).

(c) The petitioner seeks to have the agreed sum of money to be paid for the leases pro rated according to the average royalty on the different tracts. This arrangement does not take into consideration the number of wells on each tract, the age and condition of each well, the extent of undeveloped acreage of *each* tract, nor the time of termination of the original leases. Each of these items was an important factor in determining the value of the extension sold. The Wm. G. Twist lease contained more than 80 acres and expired September 28, 1919; the Albert Twist lease contained 30 acres, and expired September 3, 1918; the Edward C. Twist contained 30 acres, and expired March 21, 1920; the Jessie L. Twist lease contained 80 acres, and expired December 7, 1918. It is obvious that the mere average current royalty could not determine the value of the various extensions respectively, and that this was but an arbitrary agreement, without regard to value.

(d) The prayer is that the guardian be "permitted to enter into an agreement extending the term," obviously with the Los Angeles Cherokee Oil Company.

(e) The court, in its "order setting date of hearing petition for sale of extension of leases," mentions "the petition praying leave of the court to extend the lease" and orders that the petition be set for hearing on the 10th day of June, 1916, at 10:30 o'clock a. m. — not that the extensions be then sold.

(f) There was no order of sale.

(g) The notice was not published, but posted in three public places, "publication being not practicable."

(h) On the 16th day of June, Mrs. Welty, as the guardian and as the administratrix, files report and return on sale of extension of oil and gas mining leases, to the Los Angeles Cherokee Oil Company. In this report she says (Tr. #302, pp. 15-17), that she has executed and delivered certain oil and gas mining leases to the Los Angeles Cherokee Oil Company "in accordance with the prior order of this court setting date for hearing of her petition for sale of said oil and gas lease." The cash bonus, it is said, is to be pro rated according to certain agreements already entered into between the guardian and the Los Angeles Cherokee Oil Company.

(i) The order of court refers to the fact that the guardian filed a petition "praying for the extension of the term of certain oil and gas leases," and finds that "due and proper notice of said *hearing* has been given." The court was of the same view as we are, that there had been no notice of *sale*, but notice of *hearing* of petition. The court also finds that oil and gas leases had been executed and that the guardian is satisfied that the proposition is beneficial and should be approved, and that the guardian should enter into the agreement extending the terms of the leases. Immediately the court recites that it has examined the agreements and approves and confirms the same.

(j) The "notice of sale," so-called (Tr. p. 33), purports to give notice that in pursuance of an order of the County Court, sale would be had at 10:30 a. m., on the 16th day of June, 1916, in the County Court room in Tulsa "*at which time and at said place any person may appear to contest the sale of such extensions or show cause why such lease or leases should not be extended* from the date of the expiration of the present leases * * * and if any objections there be same to be filed in writing at the same time and place." If notice of sale in proper terms had been given, the guardian had no authority to give it, because the court had not yet heard the petition, nor had the court directed that a sale be had. The court did not sign the notice of sale. That was a function assumed by the guardian and administratrix. The court had not authorized a sale, and therefore had not authorized a notice of sale. The court had merely made an order setting a date upon which the petition would be heard. (Tr. ¶302, pp. 14-15.) The guardian had no authority, upon this character of order, to advise the public that a sale would be had upon that date. We suggest that it is obvious no contemplating purchaser would be present on that day. The only persons who would be attracted by such a notice would be those who desired to present an objection to the order of sale. In other words, persons who not only did not desire to purchase, but who desired to prevent others from purchasing. The cases of *Clayton* v. *Iddens*, 298 Fed. 18; *Jackson* v. *Gates Oil Company*, 297 Fed. 549, and *Duff* v. *Keaton*, 124 Pac. 291, all dealt with sales of leases prior to the adoption of Rule 9 of the Supreme Court; there was, nevertheless, an order of sale;

after which the guardian made a return of sale, pursuant to the order, stating that she had secured the best purchaser and the highest price obtainable, and the court then approved and confirmed the lease. In each of those there was a compliance, as held by the court in *Duff* v. *Keaton*, with the procedure prescribed for the sale of personal property within the State of Oklahoma. The present case discloses no effort to comply with any of the customs or forms commonly observed in such cases.

If the court had jurisdiction, nevertheless the proceeding was at best decidedly irregular.

Fraud.

The evidence with relation to fraud appears in the transcript, on pages 52 to 63, inclusive. It discloses that the guardian of the minors was a widow, in poor health. Pitt and Anderson (doubtless the same persons who represented the Los Angeles Cherokee Oil Company in their negotiations with the Prairie for the sale of the leases (Tr., p. 62)) urged upon her the expediency of executing an extension, so that the lease should continue as a perpetual right in the land. They became her bondsmen in the guardianship. They stated positively to her that the sum of $10,000.00 was more than the extensions were worth. They informed her that she was not doing right by her wards if she did not accept this sum. They intimated that the County Court would not look with favor upon her refusal to execute these agreements. They advised that the eyes of other persons were upon the guardianship, expecting her to

fear that the court would remove her and place the affairs of her children in strangers' hands. We were not permitted to show what representations were made to her son and communicated to her, although we endeavored to prove those representations (Tr., pp. 64-65). The petitions were prepared by the Los Angeles-Cherokee Oil Company's attorney, Mr. Pitt stating that he did not think it was necessary for her to have an attorney (Tr., p. 63). There was no person present the day of the purported sale except Rice or Lyon, one of the attorneys for the company; Mr. Pitt, the company's agent; and the guardian.

We have before discussed the inadequacy of consideration, and in that connection, have disclosed the fact that the value of the extensions, as estimated by the Prairie for the purpose of purchase, and as actually paid for in cash, was approximately $180,000.00. Positive statements were made by the agents of the Los Angeles-Cherokee Company to the effect that $18,000.00 was more than they were worth (Tr., p. 58). We must assume that the verified petition of the guardian was induced by this positive statement, and that her actions were influenced thereby. The men making it must have had a knowledge of the falsity of the statements which they made. They were in a position to know the value of the leases; the mother is not shown to have had such knowledge; and she acted without the aid of counsel, upon the suggestion of parties adversely interested.

"Representations as to value, deliberately incorrect, and fraudulently made, are actionable."

—*Lumber Co.* v. *Ott*, 142 U. S. 622, 35 L. ed. 1136;
Hood v. *Wood*, 61 Okl. 294, 161 Pac. 210;
Werline v. *Aldred*, 57 Okl. 391, 157 Pac. 305;
Dalton v. *Hooper* (Okl.), 177 Pac. 571.

The Prairie Oil & Gas Company pleaded it was a bona fide purchaser. That, however, "is an affirmative claim and must be proven by the party who seeks its benefit."

—*Barnett* v. *Kunkel* (8th C. C. A.), 259 Fed. 394;
Wright Blodgett Co. v. *U. S.*, 236 U. S. 397, 59 L. ed. 637.

There was no evidence offered to support this plea except the agreement that Dana H. Kelsey would testify, if present, that he acted for the Prairie in the purchase, in connection with Fred S. Cook, and that Mr. Kelsey would testify that he knew nothing of the transactions between the guardian and the Los Angeles Cherokee Oil Company, and that Anderson and Pitt did not inform him, at the time of the examination of the abstracts, of the matters, conversations or transactions between the Los Angeles Cherokee Oil Company and the guardian. Fred S. Cook is absent without explanation. There is no evidence in the record that he was unaware of the nature of the transactions, or of the conversations between Pitt and Anderson, on the one hand, and the guardian on the other.

Moreover, the known facts are sufficient notice that some improper activities had existed. The Prairie knew that it was buying for approximately $180,000.00 property

which had depreciated in value and which had been purchased for $18,000.00 within seven or eight months before. Bear in mind that no additional development or improvement had occurred. The Prairie knew that the probate rules of the Supreme Court had not been complied with, in that there was no competitive bidding, no order of sale, and no proper notice of sale. In the presence of the glaring irregularities, and with positive knowledge of the vast discrepancy in the prices paid, a purchaser cannot contend that he is in the exercise of good faith. He has shut his eyes to obvious facts and closed his ears against information.

We contend, moreover, that there is fraud on the face of the entire proceedings.

One must be impressed with the view that it was fraudulent to insert in the agreement the fact that the drilling of an additional well, within six months, was a part of the consideration. This was no consideration. It was but the agreement to do that which they were already bound to do. The increase in royalty was but another subterfuge and pretended consideration. For the leases under which the Los Angeles-Cherokee claimed were governed by the regulations of the Department of the Interior, being leases upon minor Indian land. Under the regulations of April 20, 1908, section 15A: "The minimum rate of royalty on oil on and after May 1, 1908, shall be 12½ per cent of the gross proceeds of the oil produced from said leased premises." Whether this condition could have been enforced against the lessee or not, the regulation serves to indicate that any changed or extended lease which might

come within the jurisdiction of the Department of the Interior would have contained the 12½ per cent royalty provision. That this is the customary royalty will not be denied. Moreover, it was but a trifling consideration at best that the royalty be increased 2½% during the remaining short term of the leases. What the royalty was to be after the leases expired is immaterial.

The face of the notice itself is so ambiguous that it must be construed as fraudulent. It was not the intention of the parties that a public sale should be had; the whole arrangement was a private agreement; the only order of the court prior to the sale was the order that the petition should be heard; and the petition was for leave to execute the extension agreement to the Los Angeles-Cherokee Oil Company. The price, terms and conditions had all been agreed upon. The agreements were executed privately. There was no hearing had, as provided by the order of the court; the notice purported only to give to those interested an opportunity to object to the granting of the petition; that is to say, to object to the granting of the extension to the Los Angeles-Cherokee Oil Company; not to give to purchasers an opportunity to bid.

In the nature of things an extension of the old lease could only be made to the person who then owned it. A stranger could not bid upon the extension of a lease owned by some one else. In order to be absolutely fair to the minors, it perhaps would have been necessary for a new lease to be sold, effective upon the expiration of the old, on each tract. But the face of the notice itself, the method of

conducting the sale, and the obvious irregularities, impress us with the view that the proceeding was deliberately designed to secure the property without the presence of any other bidders, and to conceal from the public at large the nature of the proceeding to be had on June 16, 1916; while, in a measure, appearing to comply with the laws of the state.

Conceding the gross inadequacy of consideration, the irregularities in the sale, and the fraud and unfair dealings, the case of *Schroeder* v. *Young*, 161 U. S. 334, 40 L. ed. 721, is peculiarly applicable. In that case, as in the case at bar, a judicial sale was the subject of controversy. The sale had been confirmed and a suit in equity brought to set aside the sale. The property had been sold for a little more than $1700.00, while the trial court found it to be worth $26,000.00. The court, referring to the argument that the proceedings were irregular, observed in the language of Mr. Justice Bradley, in *Graffam* v. *Burgess*, 117 U. S. 180, 29 L. ed. 839:

> "It is insisted that the proceedings were all conducted according to the forms of law. Very likely. Some of the most atrocious frauds are committed in that way. Indeed the greater the fraud intended the more particular the parties to it often are to proceed according to the strictest forms of law."

In the opinion by Mr. Justice Brown, it is said:

> "Plaintiff relied mainly for a decree in this case upon the fact that his interest in the property in question, which the trial court found to be worth $26,000.00, was sacrificed at these several judicial sales to pay a judgment of little more than $1700.00."

It will thus be seen that the principal allegation was the inadequacy of consideration. It was this fundamentally upon which the court of equity seized; it is upon the fact that a wrong has been done that equity bases the vigilant exercise of all of its powers, to protect the wronged.

The court in this case, however, proceeded to find certain irregularities, none of which amounted to a fatal defect, but among which are recited the following:

(a) The property was sold to Stephens and Schroeder, who had acted as attorneys for the judgment creditor throughout the entire transaction. Compare this to the instant case, where the guardian was not represented by counsel, but the attorneys for the purchasing company carried the entire transaction through the courts.

(b) "At neither of the sales was there any other bidder and no other person present than Stephens and the officer conducting the sales, and we can readily appreciate how inevitable it was that the property should be sacrificed." In that case, however, there was an opportunity for other bidders to appear. In the present case there was not only no other bidder present; there was no opportunity given to bidders to be present. The only right which the County Court granted by its order was the right to appear and show cause why an order of sale should not be made.

(c) Another reason was that there was an irregularity with regard to the amount of the levy on one execution. Compare this with the irregularities in the sale before the court, *viz.*, the failure to observe Rule 9, the bulk sale, the order to lease to a particular lessee for a specified price.

These are the chief irregularities which the court considered in that case, and of them, taken with the gross inadequacy of consideration, it is said:

> ***"It would be a reproach to a court of equity if it could not lay hold of such a transaction as this is shown to be and set aside a sale of property acquired under the forms of law, and in defiance of natural justice."***

How much more reasonable to set aside the transaction had with helpless minors; not only "in defiance of natural justice," but in defiance of the rules of procedure prescribed by two sovereign governments for the protection of the particular class of persons here affected. Can there be any doubt of inadequacy of consideration here? If so, the court should have permitted us to prove its inadequacy. In that direction we were not permitted to proceed.

In *Wheeler & Motter Mercantile Co.* v. *Wright*, 64 Okl. 97, 166 Pac. 184, the Supreme Court of Oklahoma said in part:

> "A judgment sale will not be set aside for mere inadequacy of price unless it is so great as to shock the conscience. A sale may be set aside for gross inadequacy of price, if accompanied by circumstances showing unfairness in the conduct of the successful bidder, or any circumstances sufficient to raise a presumption of fraud" (syllabus, paragraph 1).

Again, in *Schroeder* v. *Young*, *supra*, the court says:

> "While mere inadequacy of price has rarely been held sufficient itself to justify setting aside a judicial sale of property, courts are not slow to seize upon other circumstances, impeaching the fairness of the transaction, as a cause for vacating it, especially if the inade-

quacy be so gross as to shock the conscience. If the sale has been attended by any irregularity, as *if several lots have been sold in bulk where they should have been sold separately*, or sold in such manner that their full value could not be realized; *if bidders have been kept away; if any undue advantage has been taken to the prejudice of the owner of the property, or he has been lulled into a false security;* or, if the sale has been collusively, or in any other manner, conducted for the benefit of the purchaser, and the property has been sold at a greatly inadequate price—the sale may be set aside, and the owner may be permitted to redeem."

We call particular attention to the reference to the sale in bulk as grounds for setting aside a judicial sale.

This is a judicial sale. Hence the importance of the decision of the Supreme Court of Oklahoma in *Jackson* v. *Carroll*, 86 Oklahoma 230. There the fact that a sale of separate interests was sold in bulk was made the basis of a successful collateral attack upon the judgment of the County Court. The facts were similar to the sale in the case at bar. This recognition of the doctrine by the Supreme Court of the United States, coupled with the express decision of the Supreme Court of Oklahoma, should be sufficient in our judgment to warrant this court in reversing upon the sole ground that the interest of each of three minors in his own allotment was sold jointly with the interests of those three and two others in the allotment of the deceased father, all at a bulk price, for one consideration, without determining the value of each one, except by an arrangement suitable to the purchaser himself, and without the court's passing upon the proper valuation to be given to each interest.

In other words, we have here, for the benefit of the purchaser alone, a lump sum sale of eight different individual properties; namely, three individual allotments and the separate interests of five different persons in a fourth allotment, all for the gross sum of $18,000.00 and a certain advance in royalty.

We believe the rule in these cases is salutary, and justifies our position here. It is a complete answer to the contention which will doubtless be made, that the question of value was directly determined by the probate court, and that its judgment that the price is adequate is sufficient.

Moreover, there is a clear distinction between proceedings *ex parte* and proceedings adversary, when we consider the force and effect of the judgments rendered, and the character of proceedings necessary, to overthrow such judgments. In an adversary proceeding, fraud or perjured testimony is not sufficient to overthrow the judgment. The fraud must be extrinsic to the proceedings, because the court passes upon the question of the evidence with both parties before it, and determines whether there had been perjury committed. This, however, was an *ex parte* proceeding. A guardian represented herself and the minors' interests. She made the petition. It was not contested, and her petition was furthered and fostered by those persons adversely interested. There was no evidence submitted. In such a proceeding fraud or false testimony vitiates the entire proceeding. Compare, *United States* v. *Minor*, 114 U. S. 233, with *United States* v. *Throckmorton*, 98 U. S. 61.

The fraud here was both extrinsic and intrinsic.

Moreover, the irregularities are apparent on the face of the record. Coupled with inadequacy of consideration, they are sufficient grounds for equity to interfere. And they are sufficiently obvious to prevent the defense of bona fides by the respondent.

We respectfully urge therefore:

(1) That the decision of the Eighth Circuit Court of Appeals be reversed, as well as that of the trial court; and,

(2) If the court shall hold the Oklahoma decisions applicable, then that this court render such judgment as should be rendered upon the record, declaring the leases void and remanding for an accounting; and

(3) If said "extension leases" shall be held voidable only, then that this cause be remanded for new trial; or

(4) That the court render such other and further order as shall protect the interests of the petitioners herein and restore them to the rights which they have lost by reason of the judgments of the District Court and of the Circuit Court of Appeals.

Respectfully submitted,

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